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Applying the Fourth Amendment to Schools, New Jersey v. T.L.O., 105 S. Ct. 733 (1985)

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APPLYING THE FOURTH AMENDMENT TO SCHOOLS: *NEW JERSEY v. T.L.O.*

The fourth amendment[1] of the United States Constitution protects individuals from unreasonable searches and seizures by government officials.[2] School officials often encounter harsh conflicts with the fourth amendment when they conduct searches of high school students to combat the problem of drug use in the schools.[3] With increasing frequency, students are challenging the authority of school officials[4] to conduct searches of their lockers, belongings, and persons.[5] In *New Jersey v. T.L.O.*[6] the United States Supreme Court held that although the fourth amendment's prohibition of unreasonable searches and seizures applies to public school authorities, the reasonableness of a search conducted by these officials is tested under "reasonable grounds" criteria.[7]

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1. The fourth amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall be not violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV. The fourth amendment is made applicable to the states through the due process clause of the fourteenth amendment.

2. United States v. Chadwick, 433 U.S. 1, 7 (1977); *see* Rakas v. Illinois, 439 U.S. 128, 143 (1978); United States v. White, 401 U.S. 745, 752 (1971); Katz v. United States, 389 U.S. 347, 351-53 (1967). There is no dispute that the federal constitution prohibits unreasonable searches and seizures. Elkins v. United States, 364 U.S. 206, 213 (1960); *see* Mapp v. Ohio, 367 U.S. 643 (1961); Wolf v. Colorado, 338 U.S. 25 (1949).

3. *See generally* Delahoyde, *Drug Use in Schools*, 7 J. JUV. L. 222 (1983); U.S. DEP'T OF HEALTH, EDUCATION & WELFARE, PUB. NO. 80-390, DRUGS IN THE NATION'S HIGH SCHOOLS 23 (1979); 1 NATIONAL INSTITUTE OF EDUCATION, U.S. DEP'T OF HEALTH, EDUCATION & WELFARE, VIOLENT SCHOOLS—SAFE SCHOOLS: THE SAFE SCHOOL STUDY REPORT TO THE CONGRESS (1978).

4. Court opinions interchangeably employ the words "school officials" and "school administrators" in discussing school searches. These terms refer generally to principals and assistant principals.

5. *See* Note, *Search and Seizure—School Officials May Conduct Student Searches Upon Satisfaction of Reasonableness Test in Order to Maintain Educational Environment*, 14 SETON HALL L. REV. 738 (1984).

6. 469 U.S. 325 (1985).

7. While the Court unanimously held that the fourth amendment applies to

In *New Jersey v. T.L.O.* a teacher discovered T.L.O. smoking cigarettes and brought her to the assistant vice principal's office.[8] T.L.O. denied that she was smoking, whereupon the assistant vice principal opened her purse. The assistant vice principal spotted cigarettes, searched the entire purse, and found marihuana.[9] The State subsequently brought delinquency charges against T.L.O. The juvenile court denied T.L.O.'s motion to suppress the evidence found in her purse and held that although the fourth amendment applies to searches by school officials, the search in question was reasonable.[10] The Appellate Division of the New Jersey Superior Court affirmed the juvenile court's finding that the search did not violate the fourth amendment, but vacated the adjudication of delinquency and remanded on other grounds.[11] The New Jersey Supreme Court reversed[12] and ordered the suppression of the evidence found in T.L.O.'s purse, holding that the search was unreasonable.[13] The United States Supreme Court re-

searches by school officials, a vigorous dissent argued that the majority's "reasonable grounds" standard failed to give adequate weight to the students' substantial privacy interests. For a discussion of this split and the Court's reasoning, see *infra* notes 64-85.

8. 469 U.S. at 328. A teacher at Piscataway High School in New Jersey alleged that she observed T.L.O. (Terry Lee Owens) and another student smoking cigarettes in a school lavatory in violation of a school rule. *Id.*

9. *Id.* The assistant vice principal removed the cigarettes from T.L.O.'s purse and held them in front of her as he accused her of lying to him. As he reached into her purse for the cigarettes, he noticed a package of cigarette rolling papers. *Id.* The assistant vice principal knew that the possession of rolling papers was closely related to the use of marihuana. Suspecting drug use, he searched the purse thoroughly. *Id.* The search revealed a small amount of marijuana, a pipe, a number of empty plastic bags, a substantial quantity of money in one dollar bills, an index card that appeared to be a list of people who owed T.L.O. money, and two letters that implicated T.L.O. in marihuana dealing. *Id.*

10. State *ex rel.* T.L.O., 178 N.J. Super. 329, 428 A.2d 1327 (Middlesex County Ct. 1980).

11. State *ex rel.* T.L.O., 185 N.J. Super. 279, 448 A.2d 493 (N.J. Super. Ct. App. Div. 1982). The court remanded on the grounds that neither the record nor the findings and conclusions of the trial judge were adequate to determine the sufficiency of the *Miranda* waiver made by T.L.O.

12. State *ex rel.* T.L.O., 94 N.J. 331, 463 A.2d 934 (1983).

13. *Id.* at 341, 463 A.2d at 939. The New Jersey Supreme Court agreed with the lower courts that the fourth amendment applies to searches conducted by school officials. *Id.* at 343, 463 A.2d at 940. The court stated that through the use of the exclusionary rule, evidence seized by school officials in a reasonable search may be admissible in juvenile criminal proceedings. *Id.* at 349, 463 A.2d at 944. The court held that the assistant vice principal did not have reasonable grounds to believe that the student was illegally concealing evidence of activity that would seriously interfere with school discipline or order. *Id.* at 347, 463 A.2d at 942. The dissent did not challenge the majority's

versed, holding that the search of T.L.O.'s purse was reasonable under the circumstances and did not violate the fourth amendment.[14]

New Jersey v. T.L.O. represents the first time that the United States Supreme Court has ruled directly on the fourth amendment rights of students.[15] The Court has recognized[16] that the Constitution protects students,[17] and modern decisions have extended these constitutional protections.[18] The Court has further held that a juvenile offender is entitled to the fifth and sixth amendment protections afforded to adult

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legal standard, but argued that T.L.O. had provided a reasonable basis for the search by denying that she smoked after she was discovered smoking. *Id.* at 353, 463 A.2d at 946. The dissent stated that the search was a "valid exercise of a school administrator's authority." *Id.*

14. 469 U.S. 325, 333 (1985).

15. *See generally* Schiff, *The Emergence of Student Rights to Privacy Under the Fourth Amendment*, 34 BAYLOR L. REV. 209, 211 (1982) (contrasts the legal basis for school searches with the Supreme Court's previous opinion that searches conducted without a warrant violate the fourth amendment *per se*).

16. The Court explained the basis for recognizing constitutional protection for students in Kent v. United States, 383 U.S. 541 (1966). In *Kent* the Court observed that "[t]here is evidence . . . that the child receives the worst of both worlds: that he gets neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children." *Id.* at 556. Although *Kent* questioned the wisdom of drawing strict distinctions between juveniles and adults when faced with the issue of due process requirements in juvenile proceedings, the court only accorded partial constitutional protection to juveniles. *Id.*

17. West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943). In *Barnette* a Board of Education requirement that students recite the pledge of allegiance while saluting the American flag was challenged on constitutional grounds. Under the board's rule, a violation was punishable by expulsion. The Supreme Court struck down the rule as an unconstitutional deprivation of students' first and fourteenth amendment rights. *Id.* at 642.

18. *See, e.g.*, Board of Educ. v. Pico, 457 U.S. 853 (1982) (the removal of books from school libraries because school board members disapproved of ideas contained in the books violates students' first amendment rights); Wood v. Strickland, 420 U.S. 308 (1975) (public high school students have substantive and procedural rights while at school and school board members who violate the constitutional rights of students can be held liable for their actions); Goss v. Lopez, 419 U.S. 565 (1975) (students have a right to procedural due process when facing suspensions or other disciplinary measures enforced by school authorities); Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503 (1969) (a principal's ban on students wearing black armbands as an expression of their sentiment towards the Vietnam War violates the students' right to free speech); *In re* Gault, 387 U.S. 1 (1967) (minors subjected to juvenile proceedings are entitled to procedural due process safeguards including adequate notice of charges, right to counsel, and protection against self-incrimination); West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943) (rule that requires students to recite the pledge of allegiance while saluting the American flag is an unconstitutional deprivation of the student's first and fourteenth amendment rights). *See infra* notes 19-22.

offenders[19] and has recognized the first amendment rights of students.[20] In *Goss v. Lopez*[21] the Supreme Court held that students have the right to procedural due process when facing suspensions or other disciplinary measures.[22]

Despite the Court's extension of first, fifth, sixth, and fourteenth amendment protections to students,[23] the applicability of the fourteenth amendment and the exclusionary rule[24] was highly controversial

19. In *In re* Gault, 387 U.S. 1 (1967), a fifteen year old was confined to the Arizona State Industrial School pursuant to a decision rendered in a juvenile delinquency proceeding. *Id.* at 7. The Supreme court held that minors subjected to juvenile proceedings are entitled to procedural due process safeguards, including adequate notice of charges, the right to counsel, protection against self-incrimination, and the right to confrontation and cross-examination of witnesses. *Id.* at 33-35, 55-56. *Gault* provides the most comprehensive statement of the application of the Bill of Rights to minors. The decision declares that "neither the fourteenth amendment nor the Bill of Rights is for adults alone." *Id.* at 13.

20. In Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503 (1969), the Court recognized that juveniles, as students, do not lose their constitutional rights when they enter the school house. *Id.* at 506. The Court held that "[s]tudents in school as well as out . . . are 'persons' under the constitution." *Id.* at 511. In Board of Educ. v. Pico, 457 U.S. 853 (1982), the Supreme Court reaffirmed its position in *Tinker* that students are entitled to first amendment protection. *Id.* at 872. The Court in *Pico* held that the removal of books from school libraries because school board members disapproved of ideas contained in the books violated students' first amendment rights. *Id.*

21. 419 U.S. 565 (1975).

22. *Id.* at 575. *Goss* involved the suspensions of junior and senior high school students for ten days or less. The Court held that "due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him, and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." *Id.* at 581. The Court held that officials who violate these rights are liable for their actions. *Id. See also* Wood v. Strickland, 420 U.S. 308 (1975) (Court decided that public high school students have substantive and procedural rights while at school).

23. In Ingraham v. Wright, 430 U.S. 651 (1977), the Court failed to apply the eighth amendment ban on cruel and unusual punishment in a public school setting. The Court intimated that schools may be constitutionally unique settings.

> The schoolchild has very little need for the Eighth Amendment. Though attendance may not always be voluntary, the public school remains an open institution. . . . [T]he child is not physically restrained from leaving school during school hours; and . . . [e]ven while at school, the child brings with him the support of family and friends and is rarely apart from teachers and other pupils who may witness and protest any instances of mistreatment.
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> The openness of the public school and its supervision by the community afford significant safeguards against the kinds of abuses from which the Eighth Amendment protects the prisoner.

Id. at 670.

24. The exclusionary rule is considered an integral component of both the fourth

until the *New Jersey v. T.L.O.* decision. The fourth amendment requires that searches be government agents[25] be reasonable,[26] which usually means based on probable cause.[27] Following an approach

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and fourteenth amendments. Under the exclusionary rule the usual remedy for violation of fourth amendment rights is to exclude the illegally seized evidence from trial. Although use of the exclusionary rule sometimes has unforunate results, it is considered necessary to protect personal privacy rights. *See* Note, *Students and the Fourth Amendment: Myth or Reality?*, 46 U.M.K.C. L. REV. 282, 284-85 (1977). In Weeks v. United States, 232 U.S. 383 (1914), the majority opinion stated that the fourth amendment "might as well be stricken from the constitution" if illegally seized evidence is not excluded from criminal proceedings. *Id.* at 393. In Mapp v. Ohio, 367 U.S. 643 (1961), the Court extended the protection of the exclusionary rule to the states through the due process clause of the fourteenth amendment, and held that without application of the exclusionary rule, fourth amendment protection against unreasonable searches and seizures would be valueless. *Id.* at 655. *But see* Stone v. Powell, 428 U.S. 465 (1976); United States v. Calandra, 414 U.S. 338 (1974); State v. Young, 234 Ga. 488, 216 S.E.2d 586, *cert. denied*, 423 U.S. 1039 (1975) (court held that the fourth amendment and the exclusionary rule were not coextensive).

Though the use of the exclusionary rule often results in a total failure to prosecute, the exclusionary rule alone is not always responsible for guilty defendants going free. Often if there was no fourth amendment violation in the first place, the unlawfully discovered evidence would never have been found and the state would not have a case. *See* Trosch, Williams & Devore, *Public School Searches and the Fourth Amendment*, 11 J.L. & EDUC. 41, 43 (1982).

25. Fourth amendment constitutional limitations do not extend to searches by private citizens. *See, e.g.*, Commonwealth v. Dingfelt, 227 Pa. Super. 380, 323 A.2d 145 (1974) (court held that evidence discovered pursuant to search conducted without giving *Miranda* warning is admissible because a private citizen acquired it).

26. Reasonableness of a search is usually determined by balancing the government's interest in conducting the search against the individual's right to be free from unreasonable invasions of privacy. Doe v. Renfrow, 475 F. Supp. 1012, 1022 (N.D. Ind. 1979), *aff'd in part*, 631 F.2d 91 (7th Cir. 1980), *cert. denied*, 451 U.S. 1022 (1982). *See also* M. v. Board of Educ., 429 F. Supp. 288, 292 (S.D. Ill. 1977) (students' rights must be balanced against ability of school officials to maintain order and discipline); State v. McKinnon, 88 Wash. 2d 75, 558 P.2d 781 (1977) (question of reasonableness involves balancing the governmental interest against the individual's right to be free from intrusions). Frequently, an important issue is whether, given a particular situation, the court should utilize a balancing approach or apply the probable cause and warrant requirements. *See* United States v. Place, 462 U.S. 696 (1983); United States v. Villamonte-Marquez, 462 U.S. 579 (1983); Michigan v. Summers, 452 U.S. 692 (1981); Ybarra v. Illinois, 444 U.S. 85 (1979); Dunaway v. New York, 442 U.S. 200 (1979); Delaware v. Prouse, 440 U.S. 648 (1979); Terry v. Ohio, 392 U.S. 1 (1968); See v. City of Seattle, 387 U.S. 541 (1967); Camara v. Municipal Court, 387 U.S. 523 (1967). *See generally* 3 W. LAFAVE, SEARCH AND SEIZURE 456-57 (1978); Note, *Use of Drug Detecting Dogs In Public High Schools*, 56 IND. L.J. 321 (1981).

27. The purpose of the probable cause requirement is to protect the privacy and security of individuals against arbitrary invasions by government officials. Camara v. Municipal Court, 387 U.S. 523, 528 (1967). Under traditional search and seizure doctrine, a search is reasonable if it is based on probable cause and if there is either a

adopted in *Camara v. Municipal Court*[28] and developed in *Terry v. Ohio*,[29] the Court began to sanction searches upon a level of certainty less than probable cause.[30] In *Camara* the Court employed a reasonableness standard and altered the probable cause requirement for the issuance of an administrative search warrant.[31] The Court further developed this approach in *Terry* and substituted a reasonable suspicion standard for the probable cause requirement.[32] Since *Camara* and *Terry*, the Supreme Court and a majority of lower courts have relied on the reasonableness provision of the fourth amendment to advance search and seizure protection.[33] These courts use a balancing test that weighs the individual's fourth amendment rights against the governmental interest in obtaining evidence.[34]

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warrant or a legally valid excuse for not having a warrant. *See, e.g.*, Beck v. Ohio, 379 U.S. 89, 91 (1964); Wong Sun v. United States, 371 U.S. 471, 479 (1963); Brinegar v. United States, 338 U.S. 160, 175-76 (1949).

28. 387 U.S. 523 (1967).

29. 392 U.S. 1 (1968).

30. *See generally* Shelton, *Seizures of Personal Property Supported by Reasonable Suspicion*: United States v. Place, 44 LA. L. REV. 1149, 1150-51 (1984); Ashdown, *The Fourth Amendment and the "Legitimate Expectation of Privacy," 34* VAND. L. REV. 1289, 1296-97 (1981); Stelzner, *The Fourth Amendment: The Reasonableness and Warrant Clauses*, 10 N.M.L. REV. 33, 44-45 (1980).

In *Terry* the Court held that an officer may conduct a stop and a limited search of an individual when he can prove that a reasonably prudent man in the circumstances would reasonably believe that either his safety or the safety of others is in danger. 392 U.S. at 27. The Court considered the reasonable suspicion standard sufficient in *Terry* because in a minimally intrusive stop and patdown, the governmental interest in protecting the safety of an officer investigating suspicious circumstances outweighs the individual's privacy interest. *Id.* at 21. The *Terry* Court clearly separated the warrant clause of the fourth amendment from the provision proscribing unreasonable searches and seizures. 392 U.S. at 20-27. After *Terry*, the requirements of the warrant clause were no longer the standard by which reasonableness of a search was measured. *See* United States v. Martinez-Fuerte, 428 U.S. 543 (1976).

31. 387 U.S. at 539. *See also* Michigan v. Tyler, 436 U.S. 499 (1978); Marshall v. Barlow's, Inc., 436 U.S. 307 (1978); See v. City of Seattle, 387 U.S. 541 (1967). *See generally* Ashdown, *supra* note 30, at 1297.

32. 392 U.S. at 21. *See also* United States v. Brignoni-Ponce, 422 U.S. 873, 880 (1975) (the Court articulated the "reasonable suspicion" language now popularly used to describe the *Terry* test).

33. *See infra* notes 41-48.

34. The Supreme Court in Camara v. Municipal Court, 387 U.S. 523 (1967), weighed the needs of a city search for violations of the city housing code against a citizen's right to be protected from unreasonable searches, and held that despite the inconvenience, the administrative searches required a warrant. *Id.* at 531-33. Some authorities believe that the application of the balancing approach is fundamentally at

Prior to *New Jersey v. T.L.O.* the courts generally used five approaches to determine whether a school search was constitutional.[35] Several jurisdictions held that the fourth amendment does not apply to school searches[36] because, due to the doctrine of *in loco parentis*, school officials act as private citizens.[37] In *In re Donaldson*,[38] for example, the California Court of Appeals held that a school official is a private individual when he conducts a school search. The court based its reason-

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odds with traditional fourth amendment law. *See* Trosch, Williams & Devore, *supra* note 24, at 52.

Application of the balancing test in a school search context took place in Doe v. Renfrow, 475 F. Supp. 1012, 1022 (N.D. Ind. 1979), *aff'd in part*, 631 F.2d 91 (7th Cir. 1980), *cert. denied*, 451 U.S. 1022 (1982). *See also* M. v. Board of Educ., 429 F. Supp. 288, 292 (S.D. Ill. 1977) (student's rights must be balanced against the ability of school officials to maintain order and discipline); State v. McKinnon, 88 Wash. 2d 75, 558 P.2d 781 (1977) (the question of reasonableness involves balancing the governmental interests against the individual's right to be free from intrusions). Courts have balanced the danger of the suspected conduct against the student's right to privacy and the need to protect them from embarrassment and other psychological harms associated with the search. *See, e.g.*, Bellnier v. Lund, 438 F. Supp. 47, 53 (N.D.N.Y. 1977).

It is also extremely important to objectively consider the substantial privacy interest of the student. The Supreme Court recognized the fundamental nature of the privacy protected by the fourth amendment in Wolf v. Colorado, 338 U.S. 25 (1949). In *Wolf* the Court stated that the privacy protected by the fourth amendment is basic to a free society. *Id.* at 27.

35. Several jurisdictions modify this approach and hold that due to this doctrine, school officials act not as government agents but as private citizens. *See infra* notes 36-40 and accompanying text. Other jurisdictions look to the distinction between school administrative searches and searches executed for law enforcement purposes. *See infra* notes 49-53 and accompanying text. A few courts apply the fourth amendment to all government officials but limit application of the exclusionary rule. *See infra* notes 54-59 and accompanying text. Finally, one court strictly construes the fourth amendment and requires a warrant based on probable cause. *See infra* notes 60-63 and accompanying text.

36. *See, e.g., In re* Donaldson, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969) (vice principal of a high school is not a government official within the meaning of the fourth amendment); Mercer v. State, 450 S.W.2d 715 (Tex. Civ. App. 1970) (principal's demand that student disclose the contents of his pockets did not fall within the reach of the fourth amendment).

37. The common law doctrine of *in loco parentis* states:

> The parent may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then in loco parentis, and has such a portion of power of the parent committed to his charge, viz that of restraint and correction, as may be necessary to answer the purposes for which he is employed.

A.W. BLACKSTONE, COMMENTARIES 168 (1908). Under the *in loco parentis* doctrine, parents hand their parental powers and duties over to school officials. These officials exercise the same disciplinary and supervisory powers as the parent and, like the parent, can thereby protect the child. Note, *Justifying School Searches: The Problems With the Doctrine of In Loco Parentis*, 8 J. JUV. L. 140 (1984) [hereinafter Note, *Justifying School*

ing on the *in loco parentis* doctrine and the school's obligation to maintain discipline.[39] The court found that the school official was not an agent of the state within the meaning of the fourth amendment.[40]

The majority of jurisdictions held that the fourth amendment applies to searches of students, but that the doctrine of *in loco parentis* lowered the standard used in determining the reasonableness of the search.[41] A New York court held in *People v. Jackson*[42] that a school official,

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Searches]. *See* Note, *Search and Seizure: Is the School Official a Policeman or Parent?*, 22 BAYLOR L. REV. 554, 555 (1970).

Commentators have strenuously criticized the *in loco parentis* doctrine. They claim that the doctrine has been extended to unconstitutional proportions. *See, e.g.*, Note, *Justifying School Searches, supra*, at 142. *See also* Mercer v. State, 450 S.W.2d 715, 717 (Tex. Civ. App. 1970). Furthermore, its use in school search cases is in direct conflict with its underlying theory. To stand in the place of the parent means to look out for the best interests of the child. It is unlikely that most parents believe it is in the best interest of their child to allow him to be searched and to have the evidence found used against him in a criminal proceeding. *See, e.g.*, Tarter v. Raybuck, 556 F. Supp. 625 (N.D. Ohio 1983) (parents refused to consent to search and left school premises with son when told that police were on their way), *aff'd in part and rev'd in part*, 742 F.2d 977 (6th Cir. 1984), *cert. denied*, 470 U.S. 1051 (1985). One commentator argues that the *in loco parentis* doctrine is inappropriate in a compulsory education system. *See* Note, *Justifying School Searches, supra*, at 144-145.

38. 269 Cal. App. 2d 509, 75 Cal Rptr. 220 (1969). *See generally* Comment, *Public School Searches and the Fourth Amendment*, 9 U. DAYTON L. REV. 521 (1984) [hereinafter Comment, *Public School Searches*]; Comment, *Search and Seizure in Public Schools: Are Our Children's Rights Going to the Dogs?*, 24 ST. LOUIS U.L.J. 119 (1979).

39. 269 Cal. App. 2d at 513, 75 Cal. Rptr. at 222-23. The fourth amendment, however, guarantees freedom from all unreasonable searches, not just those conducted by police officers. *See* Comment, *Public School Searches, supra* note 38, at 526.

40. 269 Cal. App. at 511, 75 Cal. Rptr. at 225. *See generally* Trosch, Williams & Devore, *supra* note 24, at 41; Note, *Public School Searches and Seizures*, 45 FORDHAM L. REV. 202, 209-15 (1976). A Texas court reasserted this distinction between public and private action in Mercer v. State, 450 S.W.2d 715 (Tex. Civ. App. 1970). The court in *Mercer* did not focus on the school officials' objective, but conclusively characterized the school official as acting *in loco parentis* rather than as a government agent. *Id.* at 717.

41. In People v. Scott D., 34 N.Y.2d 483, 315 N.E.2d 466, 358 N.Y.S.2d 403 (1974), the New York Court of Appeals held that when exercising their authority public school teachers do not act as private individuals, but as agents of the state. *Id.* at 486, 315 N.E.2d at 468, 358 N.Y.S.2d at 406. The court determined that the school officials' responsibilities and broad powers are derived from state law and delegated by the local school boards. *Id. See also* State v. Baccino, 282 A.2d 869 (Del. Super. Ct. 1971) (search was legal because vice principal had reasonable suspicion to believe that the student's jacket contained contraband); People v. Jackson, 65 Misc. 2d 909, 319 N.Y.S.2d 731 (N.Y. App. Term 1971), *aff'd*, 30 N.Y.2d 734, 284 N.E.2d 153, 333 N.Y.S.2d 167 (1972).

42. 65 Misc. 2d 909, 319 N.Y.S.2d 731 (N.Y. App. Term 1971), *aff'd*, 30 N.Y.2d

though acting in the capacity of a government agent, need not meet the probable cause standard to satisfy fourth amendment requirements.[43] The school official need only have a "reasonable suspicion" that students were engaging in an unlawful activity.[44] In *State v. Baccino*[45] the Delaware Superior Court also adopted the reasonable suspicion rule. It noted the special and distinct relationship between the school administrator and the student.[46] A New York court listed the factors that would justify use of a reasonable suspicion standard in *People v. D.*[47]

734, 284 N.E.2d 153, 333 N.Y.S.2d 167 (1972). In *Jackson* the court upheld a search conducted by an official several blocks away from the school. *Id.* at 914, 319 N.Y.S.2d at 736. The court justified its holding on the basis of the *in loco parentis* relationship that existed between students and school officials. *Id.* at 910, 319 N.Y.S.2d at 733.

43. *Id.* at 913, 319 N.Y.S.2d at 733. *See also* State v. McKinnon, 88 Wash. 2d 75, 81, 558 P.2d 781, 784 (1977) (in some situations, search and seizure is permitted upon less than probable cause because the governmental interests outweigh the severity of the intrusion).

44. *Jackson*, 65 Misc. 2d at 914, 319 N.Y.S.2d at 736. The *Jackson* court based its less stringent "reasonable suspicion" standard on public necessity, noting the crime and drug use in the New York City Schools. *Id.* at 913, 319 N.Y.S.2d at 736. Arguably, school officials act reasonably most of the time. Under the reasonable suspicion standard, however, a student has virtually no protection against the intrusive conduct of school administrators because there is no standard approach used to determine what constitutes "reasonable suspicion." Courts, therefore, uphold the behavior of school officials with extreme regularity. *See* Gardner, *Sniffing for Drugs in the Classroom-Perspectives on Fourth Amendment Scope*, 74 NW. U.L. REV. 803, 818 (1980); Comment, *Public School Searches, supra* note 38, at 529; Note, *Students and the Fourth Amendment: "The Torturable Class"*, 16 U.C. DAVIS L. REV. 709, 726 (1983).

In *In re* G.C., 121 N.J. Super. 108, 296 A.2d 102 (Union County Ct. 1972), the court adopted the reasonable suspicion standard and recognized that a student's rights to privacy must yield to the competing governmental interest in investigating crime and particularly drug use. *Id.* at 115, 296 A.2d at 106. The school initiated a search on the basis of information supplied by an unidentified telephone caller. A teacher also received information from another student. Both informants stated that G.C. had been selling pills to other students. *Id.* at 110, 296 A.2d at 103. The court concluded that the vice principal had a reasonable suspicion that G.C.'s jacket contained contraband. *Id.* at 117, 296 A.2d at 107. The court admitted that the reasonable suspicion standard was an "incursion onto constitutionally protected rights," *Id.* at 115, 296 A.2d at 106, but stated that school officials would be negligent for not investigating. *Id.* at 117, 296 A.2d at 107.

45. 282 A.2d 869 (Del. Super. Ct. 1971).

46. *Id.* at 871. The court in *Baccino* relied on the *Jackson* opinion. For a discussion of *Jackson*, see *supra* notes 42-44 and accompanying text.

47. 34 N.Y.2d 483, 315 N.E.2d 466, 358 N.Y.S.2d 403 (1974). The court found no reasonable suspicion in the behavior of a student suspected of being a drug dealer who made two quick trips to the toilet. *Id.* at 489, 315 N.E.2d at 470, 358 N.Y.S.2d at 408.

Courts have held that the nature of the school environment justifies a modification of fourth amendment protection. *See* Horton v. Goose Creek Indep. School Dist., 690

In determining sufficiency of cause to search a student, the court considered the child's age, history and record in the school, the seriousness of the problem to which the search was directed, and the exigency to make the search without delay.[48]

Courts also examined the purpose of the school search to determine reasonableness. These courts distinguished between justifiable searches conducted for school administrative purposes and searches executed for law enforcement.[49] In *Moore v. Student Affairs Committee of Troy State*,[50] for example, a federal district court upheld a search of a student's room because the intent of the search was to enforce school policies rather than to discover evidence to be used in a criminal proceeding.[51] The distinction between these searches was reiterated in *Piazzola v. Watkins*.[52] The court in *Piazzola* recognized the potential infringement of students' rights in allowing police participation in a search conducted primarily by school authorities.[53]

F.2d 470 (5th Cir. 1982), *cert. denied*, 463 U.S. 1207 (1983). In *Horton* the court noted the school's duty to protect students and the mandatory nature of the public school system. *Id.* at 480. The court reasoned that this unique situation requires that school officials be granted "broad supervisory and disciplinary powers." *Id.* at 480. The *Horton* court went further, however, and stated that more than good faith on the part of the school official was necessary. *Id.* at 481. The court required an examination of the objective reasonableness of the action. *Id.*

48. People v. D., 34 N.Y.2d at 489, 315 N.E.2d at 470, 358 N.Y.S.2d at 408. *See also* State *ex rel.* T.L.O., 178 N.J. Super. 329, 342, 428 A.2d 1327, 1334 (1980); Doe v. State, 88 N.M. 347, 352, 540 P.2d 827, 832 (1975); State v. McKinnon, 88 Wash. 2d 75, 81, 558 P.2d 781, 784 (1977). Some critics argue that these factors are only marginally helpful in determining the legitimacy of the search. *See* Note, *supra* note 44, at 725-26 for a complete analysis of the problems inherent in these factors.

49. *See* M. v. Board of Educ., 429 F. Supp. 288, 292 (S.D. Ill. 1977) (the less strict standard should be used because the police were not involved); Picha v. Wielgos, 410 F. Supp. 1214, 1220-21 (N.D. Ill. 1976) (distinguished between searches that involve the police and those that do not, and noted that the strict standard of probable cause is required when the police are involved); State v. Young, 234 Ga. 488, 495, 216 S.E.2d 586, 592 (1975) (the reasonable suspicion standard can be applied only if school officials are acting within their proper capacities and the search is free from involvement by law enforcement personnel), *cert. denied*, 423 U.S. 1039 (1975); State v. McKinnon, 88 Wash. 2d 75, 81, 588 P.2d 781, 784 (noting that a high school principal is not a law enforcement officer and should not be held to meet the probable cause standard in conducting school searches).

50. 284 F. Supp. 725 (M.D. Ala. 1968).

51. In *Moore* a federal district court in Alabama approved the search of a dormitory room based on a tip that did not satisfy probable cause. *Id.*

52. 316 F. Supp. 624 (M.D. Ala. 1970), *aff'd*, 442 F.2d 284 (5th Cir. 1971). The court also noted the special relationship between the school and the student. *Id.* at 628.

53. The court held the dormitory room search in *Piazzola* unconstitutional. The

Despite application of the fourth amendment to all government officials, a few courts have limited application of the exclusionary rule[54] to fourth amendment violations by law enforcement personnel. In *State v. Young*[55] the Supreme Court of Georgia held that a search directed toward maintaining a safe and secure environment for all students is reasonable, even if probable cause is not present.[56] The *Young* court stated that the fourth amendment and the exclusionary rule are not coextensive. The exclusionary rule is not a constitutional right, but a judicially-created remedy.[57] The court held that because the exclusionary rule exists to deter police misconduct, it applies only to law enforcement agents.[58] Thus, although school officials must comply with the fourth amendment when searching students, the court will not bar

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court noted that the interests behind the *Piazzola* search were not limited to those held by the school and the student, but included those of the police authorities. *Id.* at 626-27. When school administrators assist law enforcement officials, students have benefitted from the fourth amendment standard of reasonableness based on probable cause. In Picha v. Wielgos, 410 F. Supp. 1214, 1219 (N.D. Ill. 1976), the court stated: "Where the police have significant participation, fourth amendment rights cannot leak out the hole of presumed consent to a search by an ordinary non-governmental party."

54. *See supra* note 24 for a discussion of the exclusionary rule.

55. 234 Ga. 488, 216 S.E.2d 586, *cert. denied*, 423 U.S. 1039 (1975). In *Young* the defendant and two other students were searched by an assistant principal. *Id.* at 488, 216 S.E.2d at 588. The basis for the search was that one of the students jumped up and put his hands into his pants when the assistant principal approached. *Id.* The three students were ordered to empty their pockets whereupon it was discovered that Young possessed marihuana. *Id.*

56. *Id.* at 494-96, 216 S.E.2d at 592-93. In upholding the principal's actions, the *Young* court focused on the lack of maturity of students and the substantial government interest in maintaining discipline, security, and a healthy educational environment. *Id.* Under the standard employed in *Young*, a school official does not have to suspect that a particular student possesses some kind of contraband to make his search of the student reasonable. *Id. See* Comment, *Student Searches—The Fourth Amendment and the Exclusionary Rule*, 41 MO. L. REV. 626, 627-28 (1976).

57. *Young*, 234 Ga. at 489-91, 216 S.E.2d at 588-90. *See also* Comment, *supra* note 56, at 627. *Young* effectively eliminates the concept of objective reasonableness from school administrative searches and substitutes a subjective "good faith" test. *See* Gardner, *supra* note 44, at 814. This standard, based on good faith, is practically no standard at all because good faith is entirely subjective. When the searcher's motive is questioned, usually "a secure and safe environment" justification will suffice. *See* Comment, *supra* note 56, at 630.

58. 234 Ga. at 493, 216 S.E.2d at 597. The court in *Young* recognized that school officials are state officials, but not state law enforcement officials. *Id.* The court, after balancing the benefits and burdens of applying the exclusionary rule, concluded that its goal was to deter unlawful acts. This purpose is not served by excluding evidence obtained by school officials. *Id.* at 494, 216 S.E.2d 591.

illegally seized evidence from disciplinary proceedings.[59]

The strictest approach to the constitutionality of school searches applied the full thrust of the fourth amendment to the classroom, regardless of whether the police or the educators conduct the search. This approach, used in *State v. Mora,*[60] allows searches by school officials when a warrant is issued upon probable cause.[61] Without discussing the doctrine of *in loco parentis*, the *Mora* court ruled that school officials did not fit within any of the recognized exceptions to the fourth amendment warrant and probable cause requirements.[62] The court's opinion conceded the need to maintain discipline in the schools, but asserted that this discipline must be exercised within constitutional parameters.[63]

In *New Jersey v. T.L.O.*[64] the Supreme Court held that the fourth amendment applies to searches conducted by public school authorities.[65] The majority criticized the lower court's distinction between

59. *Id.* at 498, 216 S.E.2d at 593. Although students are protected by fourth amendment, the "restraints placed by the fourth amendment on school house searches by school officials are minimal." *Id.*

60. 307 So. 2d 317 (La. 1975), *vacated*, 423 U.S. 809 (1975). In *Mora* a public high school gym teacher conducted a warrantless search of a student's gym bag and found a small quantity of marihuana. *Id.* at 319. The Court held that the school officials were governmental agents within the meaning of the fourth amendment and were subject to its constraints. *Id.* For a discussion of *Mora*, see Note, *Search and Seizure in the Public Schools*, 36 LA. L. REV. 1067 (1976).

61. This approach was also advocated by dissenting justices in two different jurisdictions. *See Young*, 234 Ga. at 507, 216 S.E.2d at 598 (Gunter, J., dissenting); State v. McKinnon, 88 Wash. 2d 75, 83, 558 P.2d 781, 785 (1977) (Rosellini, J., dissenting). The probable cause requirement was also followed, in part, in an Oregon decision that held that school officials are government agents to whom the probable cause standard *may* apply. *See* State v. Walker, 19 Or. App. 420, 528 P.2d 113 (1974).

62. *Mora*, 307 So. 2d at 320. The Supreme Court, in Katz v. United States, 389 U.S. 347 (1967), stated that a search without a validly obtained search warrant issued upon probable cause is unreasonable *per se* under the fourth amendment, subject to a few specially established and well delineated exceptions. The Court has recognized five exceptions that waive the warrant requirement: consent, plain view, emergency, incident to an arrest, and stop and frisk. Although the court has undoubtedly expressed a preference for searches based on warrants, a warrant is not always necessary or desirable. *See* Gardner, *supra* note 57, at 807-11; Trosch, Williams & Devore, *supra* note 24, at 46-48; Note, *supra* note 44, at 711, 720-21.

63. *See Young*, 234 Ga. at 508, 216 S.E.2d at 599 (Gunter, J., dissenting). *See also McKinnon*, 88 Wash. 2d at 84, 588 P.2d at 786 (Rosellini, J., dissenting).

64. 469 U.S. 325 (1985).

65. *Id.* at 333. The entire Court agreed on this point.

criminal and administrative searches,[66] and rejected the notion that the *in loco parentis* doctrine could justify dispensing with fourth amendment requirements. Writing for the majority, Justice White concluded that school officials act as representatives of the state, not merely as surrogates for the parents. He reasoned that the *in loco parentis* doctrine conflicts with contemporary reality and prior cases recognizing constitutional guarantees.[67]

Justice White proceeded to analyze the reasonableness of the search conducted by the assistant vice principal. First, the Court found that students have a legitimate expectation of privacy in their purses or wallets because they may often find it necessary to carry personal property into the school.[68] Next, the Court noted the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds.[69] The Court found it necessary to balance the expectation of privacy against the school's equally legitimate interest in maintaining discipline and a safe learning environment.[70] The Court agreed with the New Jersey Supreme Court that these interests and the unique nature of the school setting make it unreasonable to require a search warrant or probable cause.[71] Finally, the Court stated that the legality of a search of a student depends simply on the reasonableness

66. *Id.* at 335. The Court relied on *Camara* and looked to the individual's interest in privacy and security. For a discussion of *Camara*, see *supra* notes 28-34 and accompanying text.

67. 469 U.S. at 336. The Court examined Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503 (1969), and Goss v. Lopez, 419 U.S. 565 (1975). The Court stated that "[i]f school authorities are state actors for purposes of the constitutional guarantees of freedom of expression and due process, it is difficult to understand why they should be deemed to be exercising parental rather than public authority when conducting searches of their students." 469 U.S. at 336. The Court added that the authority exercised by public school officials today is not voluntarily conferred on them by individual parents, but is derived from publicly mandated educational and disciplinary policies. *Id.* *See supra* notes 18, 20, 22 for discussion of *Tinker* and *Goss*.

68. 469 U.S. at 338-39. The Court stated that students may often carry on their persons or in their purses or wallets highly personal items such as photographs, letters, and diaries that are neither disruptive nor contraband. *Id.* at 339. Students do not waive all rights to privacy in these items merely by bringing them onto school premises. *Id.*

69. *Id.*

70. *Id.* at 340. The Court reasoned that the fundamental command of the fourth amendment is that searches and seizures be reasonable, and although both the concept of probable cause and the requirement of a warrant bear on the reasonableness of a search, in certain limited circumstances neither is required. *Id.*

71 *Id.* at 340-41.

of the search under the circumstances.[72]

The majority examined the legality of the search in T.L.O.'s case and reversed the New Jersey Supreme Court's holding that the search was unreasonable.[73] According to the Court, the fact that T.L.O. was accused of smoking and strenuously denied the accusation made the possession of cigarettes relevant. The assistant vice principal had reason to suspect that the purse might contain cigarettes. Once he opened the purse and found evidence of marihuana use, it was reasonable for him to search the remainder of the purse.[74] Justice Powell and Justice O'Connor concurred, stating that greater emphasis should be placed on the special characteristics of the school setting that justify a lower fourth amendment standard for students.[75]

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72. *Id.* at 341-42. The Court relied on Terry v. Ohio, 392 U.S. 1 (1968), to determine reasonableness, and applied a two-part inquiry. First, it looked at whether the act was justified at its inception. 469 U.S. at 341. Second, it asked whether the search as conducted "was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* (quoting *Terry*, 392 U.S. at 20). The Court stated that a search is justified at its inception when reasonable grounds for suspicion exist. *Id.* at 342. A search is permissible in scope when its measures are reasonably related to the objective of the search. *Id.*

73. *Id.* at 343.

74. *Id.* at 345-47. The Court determined that two separate searches occurred in this case. The first search for cigarettes provided the reasonable suspicion that justified the second search for marihuana. The Court found that both searches were entirely reasonable and that the New Jersey Supreme Court's decision to exclude the evidence from T.L.O.'s juvenile delinquency proceedings on fourth amendment grounds was erroneous. *Id.* at 347-48.

75. *Id.* at 348. Justices Powell and O'Connor relied on *Goss, Tinker,* and *Ingraham,* stating that students are entitled to some constitutional protection. *Id.* at 348-49. For a discussion of these cases, see *supra* notes 18-23 and accompanying text. The Justices noted, however, the special relationship and commonality of interests between school authorities and students, and stated that the relationship does not contain the adversarial characteristics of the relationship between law enforcement officials and criminal suspects. 469 U.S. at 349-50. They reasoned that the need for order and discipline in schools makes it unreasonable to apply the same constitutional rules in schools as in the enforcement of criminal laws. *Id.* at 350.

Justice Blackmun, in a separate concurrence, stressed the importance of balancing the conflicting interests. *Id.* at 351. Justice Blackmun felt that the Court omitted a crucial step in its analysis of whether a school search must be based upon probable cause. He noted the limited exceptions to the probable cause requirement and stated that the Court's balancing test approach created another exception, not the rule. *Id.* at 352. Justice Blackmun argued that the special characteristics of the school environment justify excepting school searches from the warrant and probable cause requirement. *Id.* at 352-53.

Justice Brennan, joined by Justice Marshall, dissented in part,[76] concluding that school searches are constitutionally permissible only if supported by probable cause.[77] Though these dissenters agreed that school searches may constitute an exception to the fourth amendment's warrant requirement, they criticized the balancing test used by the majority.[78] Justice Brennan argued that historically, probable cause is a prerequisite for a search. He recommended an alternative balancing approach in which additional weight is given to the privacy and security interests protected by the fourth amendment.[79] Justice Brennan balanced the costs of applying traditional fourth amendment standards against the serious privacy interests of the students.[80] Applying the probable cause standard to the facts of the case, he found that the search violated T.L.O.'s constitutional rights.[81]

In a separate dissent, Justice Stevens, joined by Justices Marshall and Brennan, argued that the court misapplied the standard of reasonableness embodied in the fourth amendment.[82] Justice Stevens reasoned that a standard better attuned to the problem of violence and unlawful behavior in the schools was necessary.[83] Justice Stevens

76. Brennan and Marshall agreed that the fourth amendment applies to school officials. *Id.* at 353-54.

77. *Id.* at 355.

78. *Id.* at 357-58. Justices Marshall and Brennan found that the search in this case was not minimally intrusive, therefore any inquiry must focus on the fourth amendment's warrant and probable cause requirements. *Id.* at 355. They disagreed with the Court's decision not to use the probable cause standard when assessing the validity of a school house search. *Id.* at 362.

79. *Id.*

80. *Id.* at 367. Justice Brennan argued that courts should not weigh the "government's need for effective methods to deal with breaches of public order," but should consider the costs of applying the probable cause standard as opposed to some lesser standard. *Id.* at 363.

81. *Id.* at 368-69. Justice Brennan went on to state his belief that the Court needed to develop a coherent framework to resolve fourth amendment questions. *Id.* at 370. He expressed concern about the manner in which the Court was addressing fourth amendment issues. *Id.* at 369. He concluded that "the methodology of today's decision may turn out to have as little influence in future cases as will its result, and the Court's departure from traditional Fourth Amendment doctrine will be confined to the schools." *Id.* at 370.

82. *Id.* at 375.

83. *Id.* at 378. Justice Stevens discussed the question of whether the exclusionary rule applies. *Id.* at 371-73. He noted that the standard utilized by the Court will permit teachers and school administrators to search students when they suspect that the search will reveal any evidence of misbehavior. *Id.* at 371.

would permit school officials to search a student if they have reason to believe that the search will uncover evidence that the student is either violating the law or engaging in serious disruptive conduct.[84] Stevens concluded that the search in this case failed to meet this standard.[85]

The "reasonable suspicion" standard adopted by the Supreme Court to determine the constitutionality of school searches is inconsistent with prior case law and may substantially infringe on students' significant privacy interest. In balancing the school official's duty to maintain order and discipline against the student's right to privacy, it is not difficult for a court to find "reasonable suspicion"[86] as long as the official claims that he acted in good faith. This approach does not ensure that the student's privacy interest will be given sufficient and serious consideration.[87] The Court has upheld warrantless searches of students based on a standard less than probable cause,[88] and lower federal courts strongly support the reasonableness of these school searches.[89] The Court's denial of full fourth amendment protection to students, however, is inconsistent with its previous recognition of other related constitutional rights.[90]

The probable cause standard should not be disregarded when assessing the validity of a school house search. Historically, the Supreme Court has held that "probable cause is a prerequisite to a full-scale search."[91] In *T.L.O.*, however, the Court states that school searches must be reasonable and need not fulfill a probable cause requirement.[92] The Court cites a number of cases in which it upheld the legality of

84. *Id.* at 376. Justice Stevens cited Terry v. Ohio, 392 U.S. 1 (1968), and stated that this standard is "properly directed at 'the sole justification for the warrantless search.'" 469 U.S. at 378. Additionally, he argued that this standard "varies the extent of the permissible intrusion with the gravity of the suspected offense" and is more consistent with common law and the Court's precedent. *Id.* at 379.

85. *Id.* at 383-85.

86. *See supra* note 44.

87. *Id.* School officials who serve as role models for students should be compelled to uphold pupils' constitutional rights. Schools function to educate students socially and civilly as well as academically.

88. *See supra* notes 41-59 and accompanying text.

89. *Id.*

90. *See supra* notes 15-22 and accompanying text. The Court does not fully accept that the unquestioned authority previously given to school officials has been replaced by broader student rights.

91. 469 U.S. at 359. *See* Dunaway v. New York, 442 U.S. 200, 214 (1979); Chambers v. Maroney, 399 U.S. 42 (1970).

92. 469 U.S. at 340-41.

searches based on less than probable cause,[93] but these cases can be distinguished from *T.L.O.* by the fact that the searches involved were minimally intrusive and had critical law enforcement purposes.[94] The *T.L.O.* Court "fails to cite any case in which a full-scale intrusion upon privacy interests has been justified on less than probable cause."[95] The social costs of using the probable cause standard are minimal when weighed against the serious privacy interests at stake.[96]

Traditional fourth amendment jurisprudence provides additional flexibility when necessary. Consequently, no substantial reason exists to abandon the probable cause standard in the school setting.[97] The privacy interests of school children should be weighed heavily because schools often teach these children to respect the law.[98] The Court's decision in *T.L.O.* leaves open to question which practical fourth amendment rights remain in the school environment.[99]

In *T.L.O.* the Supreme Court held that the fourth amendment applies in a school setting, but avoided the difficult question of how far the disciplinary power of school officials extends and where the constitutional rights of students begin. The Court thus failed to address many of the difficult problems posed by school searches.[100] Hopefully,

93. *Id.* at 341.

94. *See, e.g.,* Delaware v. Prouse, 440 U.S. 648 (1979); United States v. Martinez-Fuerte, 428 U.S. 543 (1976); United States v. Brignoni-Ponce, 422 U.S. 873 (1975); Terry v. Ohio, 392 U.S. 1 (1968).

95 469 U.S. at 360. Even in administrative searches the Court has held that the probable cause standard should govern. *Id. See* Camara v. Municipal Court, 387 U.S. 523 (1967). The fourth amendment's purpose is to protect an individual's privacy from searches that are not justified by the "reasonable" requirements of the probable cause standard. 469 U.S. at 361.

96. *Id.* at 362. The probable cause standard would not seriously hamper the government's interest in maintaining a safe and effective educational setting in the public schools because "in most instances the evidence of wrongdoing prompting teachers or principals to conduct searches is sufficiently detailed and specific to meet the traditional probable cause test." 3 W. LAFAVE, *supra* note 26, at 459-60.

97. 469 U.S. at 367.

98. *See id.* at 385-86.

99. This case may well create a future uncertainty as to what standard applies when dealing with the fourth amendment. *See* Stewart, *And in Her Purse the Principal Found Marijuana*, 71 A.B.A. J. 50, 53 (Feb. 1985).

100. The Court failed to decide whether the exclusionary rule applied to illegal searches by school officials, whether a student has a legitimate right of privacy in school property such as desks and lockers, whether school officials may search only individuals suspected of violating the law or rules of the school, and whether the standards change when law enforcement officials are involved in the search.

in future cases the Court will develop a standard that protects students from intrusive and unwarranted searches but does not place an impossible burden on school officials.

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